REMARKS

Claims 1-20 are pending. Of these, claims 1, 9 and 15 are independent..

§ 103 REJECTION - '301 PATENT

Beginning on page 2 of the Office Action, claims 1-20 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent No. 6,112,301 to Johnson ("the '301 patent") in view of non-patent document "An Extensible Kernel Object Management System" (1991, Conference on Object Oriented Programming Systems Languages and Application; Phoenix, Arizona, United States; pages 247-262) by Yaseen et al. ("Yaseen Ref."). This rejection is traversed.

An operating system (OS) has a kernel, namely an OS kernel. A database (DB) can have a kernel, namely a DB kernel. An OS kernel is different than a DB kernel.

The '301 patent is directed to customizing an OS, a part of which includes tuning parameters. The '301 patent is silent regarding anything related to a DB kernel. In contrast, the Yaseen Ref. is directed to using an objected-oriented structure for a database (including the kernel thereof) rather than the traditional monolithic structure. The Yaseen Ref. is silent regarding anything related to an OS kernel.

While the Yaseen Ref. might have motivated the skilled artisan to adopt an object-oriented structure for a DB kernel, why would the skilled artisan have thought to adapt an OS kernel (such as in the '301 patent) according to the DB kernel principles taught by the Yaseen Ref.? Again, the Yaseen Ref. is silent as to anything related to an OS kernel. For example, nowhere in the Yaseen Ref. is there a statement that its teachings apply to OS kernels as well as to DB kernels. Conversely, there is nothing about the '301 patent that would point the skilled person to investigate a DB kernel.

There is a disconnection in the Examiner's logic. In other words, the Examiner has failed to provided a reasonable explanation for why the skilled artisan would have looked to a piece of DB kernel art to modify a piece of OS kernel art.

Applicants understand that the some measure of hindsight is necessary for the Examiner to assess the most relevant prior art. Here, however, without some reasonable explanation as to why the skilled artisan would have looked outside the OS kernel art to the DB kernel art, or why the skilled

artisan would have had some insight as to the applicability of DB kernel art to an OS kernel, then the only reason underpinning the Examiner's asserted combination of art is an impermissible measure of hindsight.

In view of the foregoing discussion, Applicants traverse the Examiner's asserted combination of art. No reasonable explanation has been given for why the skilled artisan would have recognized that the advantages touted by the Yaseen Ref. (a piece of DB kernel art) could be enjoyed by the OS kernel art, specifically by the OS kernel taught by the '301 patent. Rather, the asserted combination of art is based upon an impermissible measure of hindsight, which renders the asserted combination improper.

In view of the foregoing discussion, withdrawal of the rejection is requested.

CONCLUSION

The issues raised in the Office Action are considered to be resolved. Accordingly, Applicant again requests a Notice of Allowability.

If the Examiner believes that personal communication will expedite prosecution of this application, the Examiner is invited to contact the undersigned.

If necessary, the Commissioner is hereby authorized in this, concurrent, and future replies to charge any underpayment or non-payment of any fees required under 37 C.F.R. §§ 1.16 or 1.17, or credit any overpayment of such fees, to Deposit Account No. 08-0750, including, in particular, extension of time fees.

Respectfully submitted,

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By: _____

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